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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,020	01/29/2004	George C. Lewis	1	8000

7590 12/21/2005
George C. Lewis
3838 Animas Way
Superior, CO 80027

EXAMINER

GRAHAM, MARK S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/769,020

Applicant(s)

LEWIS, GEORGE C.

Examiner

Mark S. Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-9,14 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6-9, 14, 25-27 is/are rejected.
- 7) ☒ Claim(s) 21-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 27 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed specification does not provide for an irremovably attached body of two or more materials.

Claims 9, 14, 25, 26, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In the last two lines of claim 9, a word or words appear to be missing leaving the claim language unclear.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 9, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Castronovo, Jr. (Castronovo). Castronovo discloses the claimed structure and may be used for the same purpose. Regarding the “indicator” note that core elements a-d are colored differently. Concerning claim 7, when a core element is not completely within the pillow as shown in Fig. 1 a hole is available for the intended use.

In response to applicant's amendments and remarks, the bottom exterior surface of Castronovo's device is smooth as is the exterior surface of the lobes 15.

Regarding claim 9, Castronovo's cylindrical hole is capable of snugly receiving a pin which is all that the claim requires. The intended use of the device does not further limit it. See *In re Schreiber* 128 F.3d 1473, 44 USPQ2d 1429 (Fed. Cir. 1997).

Claims 9, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Nichols. Nichols discloses the claimed structure and may be used for the same purpose. The upper surface cutout provides a smooth exterior surface.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 6, 14, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castronovo. Castronovo discloses the claimed device for the reasons explained above with the exception of the particularly claimed type and hardness of the foam. However, absent a showing of unexpected results, such a hardness would have been obvious to the ordinarily skilled artisan depending on the degree of firmness desired by the user. Regarding the type of foam used, the examiner takes official notice that polyethylene foam is commonly known. Such a foam being well known and suitable for Castronovo's purpose would have been obvious to the ordinarily skilled artisan.

Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langer in view of Castronovo. Langer discloses the claimed structure and may be used for the same purpose with

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the exception of the indicator. (Langer's projections 16 may be considered the "marks" and may be used for the desired purpose). Regarding the indicator, as disclosed by Castronovo it is known in the art to use cores of different densities and color code them accordingly. It would have been obvious to one of ordinary skill in the art to have done the same with Langer's pillow for the same reason.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols. Nichols does not comment on the permanency of the attachment of his layers. However, it would have been obvious to one of ordinary skill in the art to have permanently fastened them to keep the pillow from coming apart. Core 11 may be considered the retaining pin.

The applicant's first argument pertains to non-analogous art. However, this argument is not relevant to the instant rejections. The non-analogous art argument concerns the situation when references from two disparate arts are combined. Such is not the case in the present rejections.

Applicant's second argument is that Castronovo does not disclose an outer cylindrical tube. However, applicant has not claimed such a feature so this argument is not persuasive.

Likewise with regard to the hole for receiving a peg the applicant has not claimed that the hole is in the inner cylindrical portion as argued. The claim provides that a hole be located at one end of the inner cylindrical portion which is what Castronovo's Fig. 1 structure shows.

Concerning the claim 9 argument, no facts have been provided to support applicant's opinion.

Concerning the argument over the claim 8 rejection it is noted that applicant has not claimed an indicia as argued. Applicant has claimed "marks" which Langer's projections represent. How they are used is not at issue in the instant article claims.

Claims 21-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 28 is allowed.

Applicant's arguments filed 10/14/05 have been fully considered but they are not persuasive.

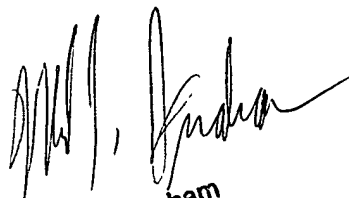
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
12/12/05



Mark S. Graham
Primary Examiner